

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 411 of 2024

Appellants : i. Rizwan Ali s/o Shoukat Hussain alias Allahyar
ii. Muhammad Ameen s/o Shoukat Hussain alias Allahyar
iii. Anjuman s/o Shoukat Hussain alias Allahyar
iv. Shah Jahan s/o Shoukat Hussain alias Allahyar
v. Abdul Razzak s/o Shoukat Hussain alias Allahyar

Through Mr. Munir Ahmed Turk, advocate.

Respondent : The State
Through Mr. Fayyaz Hussain, APG

Date of hearing : 20.05.2025

Date of judgment : 26.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J -. The appellants, feeling aggrieved and dissatisfied with the judgment of conviction dated 11.05.2024 passed by the learned Sessions Judge, Thatta, in Sessions Case No. 463 of 2020 arising out of FIR No. 15/2020 of P.S. Keenjhar Lake, hereby prefer the instant criminal appeal. By way of the impugned judgment, all five appellants were convicted and sentenced under various sections of the Pakistan Penal Code, including but not limited to Sections 324, 334, 337-A(ii), 337-F(vi), 147, 148, 149, and 504 PPC. The learned Trial Court sentenced each appellant to rigorous imprisonment on several counts, along with fines, Arsh and daman amounts, all stemming from an alleged altercation with the complainant party.

2. The prosecution case, as narrated in the FIR lodged on 11.04.2020 by complainant Zahid Ahmed, is that he was managing agricultural lands belonging to one Sarfaraz Nizamani in Deh Hilliya, Taluka Thatta. On 10.04.2020, at around 1:00 p.m., while he and Noor Hassan were en route to the land on a motorcycle, they allegedly encountered the five accused persons at the site of the old protective embankment. According to the FIR, the accused, armed with hatchets, began a verbal confrontation. It is alleged that Rizwan initiated physical violence by striking Noor Hassan on the head with a hatchet, followed by successive blows from the other co-accused on various parts of Noor Hassan's and the complainant's bodies. The complainant also stated that a scuffle ensued, during which a villager named Mushtaque was also injured while attempting to intervene.

Subsequently, an FIR was registered, and following investigation, the accused were initially shown as absconders. Three of them later joined the proceedings after securing pre-arrest bail. The remaining two, Shah Jahan and Abdul Razzak, also joined later and were included through an amended charge. After completion of trial proceedings and recording of prosecution evidence, including testimonies of complainant Zahid Ahmed, injured Noor Hassan, and medico-legal expert Dr. Muhammad Munir Jokhio, the Trial Court convicted all five accused persons through the impugned judgment.

3. The learned counsel for the appellants did not press the instant appeal on merits and submitted that all appellants are willing to comply with the directions of the learned trial court regarding payment of *Arsh* and *Daman*, amounting cumulatively to Rs. 2,47,000/-. He urged that the appellants are repentant and willing to fulfill the compensatory obligations imposed upon them. He also pointed to the mitigating circumstances of the case, submitting that the incident arose from a land dispute between two groups, both of whom suffered injuries, and that the matter no longer carries the same intensity due to the passage of time and partial service of sentences by the accused.

4. The learned APG for the State conceded to the submissions made by the learned counsel for the appellants. He did not oppose the prayer for disposal of the appeal as not pressed in view of the appellants' willingness to pay *Arsh* and *Daman* in compliance with the judgment of the learned trial court. However, he submitted that the compensatory portions of the judgment must be strictly adhered to and enforced.

5. Before parting with this judgment, it is imperative to record that the learned counsel for the appellants did not press the instant criminal appeal on instructions, hence the instant appeal to such extent is dismissed, and submitted that the appellants are willing and ready to comply with the directions of the learned trial Court with regard to the payment of *Arsh* and *Daman* as awarded, which cumulatively amount to Rs.247,000/-. The learned Additional Prosecutor General for the State, present in Court, also did not object to this submission and raised no further resistance on this aspect.

6. In view of the foregoing and considering the appellants' concession, the instant appeal is dismissed as not pressed to the extent of substantive sentence, while the sentence passed by the learned trial Court is reproduced herein for ready reference:

"To suffer rigorous imprisonment for one (01) year for the offence punishable under Section 147 PPC read with Section 149 PPC.

To suffer rigorous imprisonment for one (01) year for the offence punishable under Section 148 PPC read with Section 149 PPC.

To suffer rigorous imprisonment for seven (07) years for the offence punishable under Section 324 PPC read with Section 149 PPC and to pay fine of Rs.10,000/- by each accused, in default whereof, to further undergo simple imprisonment for three (03) months.

To suffer rigorous imprisonment for five (05) years for the offence of Itlaf-udw, punishable under Section 334 PPC read with Section 149 PPC, and to pay Arsh in the amount of Rs.232,020/-, jointly by all accused, to the injured Noor Hassan in terms of Section 337-T PPC, being one-tenth of Diyat for one finger, as provided in the Federal Government Notification bearing No.F.8(3)IF.III/9-1-672/2019 dated 01.07.2019 for the fiscal year 2019-2020.

To suffer rigorous imprisonment for one (01) year for causing injury Shajjah-i-Khafifah to Zahid Ahmed and Noor Hassan, punishable under Section 337-A(i) PPC read with Section 149 PPC, and to pay Daman of Rs.5,000/- by each accused to each of the said injured persons.

To suffer rigorous imprisonment for one (01) year for causing injury Ghayr-Jaifah Badi'ah to injured Noor Hassan, punishable under Section 337-F(ii) PPC read with Section 149 PPC, and to pay Daman of Rs.5,000/- by each accused to the said injured.

To suffer rigorous imprisonment for six (06) months for causing injury Ghayr-Jaifah Damihah to Zahid and Noor Hassan, punishable under Section 337-F(i) PPC read with Section 149 PPC, and to pay Daman of Rs.5,000/- by each accused to each of the said injured persons."

16. The trial Court further directed that:

"In case of non-payment of Daman and Arsh, the accused shall be kept behind bars and dealt with in the same manner as if sentenced to simple imprisonment until the same is paid. However, the accused are at liberty to avail the remedies provided under Sections 337-X and 337-Y PPC. All sentences awarded hereinabove to the accused shall run concurrently, with the benefit of Section 382-B Cr.P.C., if any. Accused Shah Jehan was produced in custody, whereas accused Rizwan Ali, Anjuman, Muhammad Ameen, and Abdul Razzaque were present on bail. They were taken into custody; their bail bonds were cancelled, and sureties discharged. All accused were sent to jail with conviction warrants to undergo the sentences awarded to them by the trial Court."

7. Subsequently, the Jail Pay Roll was requisitioned and reflects the following particulars with regard to sentence served, remission earned, and unexpired terms of imprisonment:

- ***Accused Rizwan Ali, Muhammad Ameen, and Anjuman***, all sons of Shoukat Hussain alias Allah Yar Turk, have individually served 10 months and 22 days of imprisonment up to 03-04-2025 (excluding remissions), and have earned remissions amounting to 1 year, 11 months, and 25 days. Their unexpired portion of sentence as of that date stands at 4 years, 4 months, and 13 days.
- ***Accused Abdul Razzaque***, also son of Shoukat Hussain alias Allah Yar Turk, has served 2 years and 24 days (excluding remissions) up to 03-04-2025, and has earned 2 years, 8 months, and 1 day in remissions. His unexpired sentence is calculated to be 2 years, 6 months, and 5 days.
- ***Accused Shah Jehan***, son of Shoukat Hussain alias Allah Yar Turk, has already served 4 years, 5 months, and 19 days of imprisonment (excluding remissions), and earned remissions totalling 5 years, 7 months, and 4 days. Consequently, no unexpired portion of sentence remains in his case. However, he continues to remain in custody solely due to non-payment of Arsh and Daman as directed by the learned trial Court.

8. This Court, in exercise of its appellate jurisdiction and having regard to the mitigating circumstances, particularly that the incident arose out of a land dispute between the parties, resulting in mutual altercation where both sides suffered multiple injuries, some grievous and some superficial, is inclined to take a lenient view. Therefore, while maintaining the *quantum* and *direction* for payment of Arsh and Daman strictly in accordance with the terms laid down by the learned trial Court, the custodial sentence of all appellants is modified to the extent of period already undergone.

9. The appellants shall, however, remain liable for payment of the outstanding amounts of Arsh and Daman as per law, and non-payment shall entail consequences in terms of Section 337-Y PPC. The remaining portions of the trial Court's judgment, not inconsistent herewith, are hereby maintained and shall continue to hold the field. Let a copy of this judgment be communicated to the learned trial Court and provided to the accused forthwith.

J U D G E